IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.644 of 2000.

Date of decision: September 26th, 2007.

State of Himachal Pradesh. ……. Appellant.

Vs.

Tara Chauhan and others. ……. Respondents.

Coram

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting?No

For the Appellant: Mr.D.S. Nainta, Deputy Advocate General.

For the Respondents: Mr. Ramakant Sharma, Advocate.

Surinder Singh, J (oral):

The respondents were tried and acquitted for the offences under Section 379 of the Indian Penal Code and Section 33 of the Indian Forest Act, against which, the instant appeal has been filed by the State.

Heard and gone through the record.

The allegations against the respondents have been that on 14.12.1993, they along with the help of 2-3 Gorkha labourers felled one tree of Kail, one tree of Rai, three threes of Moru and Ban, one tree of Tuni, four threes of Jamun and other four from un-demarcated forest, Kungal, without seeking permission from the Forest Department and further that they encroached upon the Government land comprised in khasra No.568. On 15.12.1993, Rattan Singh Forest Guard prepared the damage report and informed the Block Officer. The respondents did not hand over the

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Whether reporters of local Papers may be allowed to see the judgment? Yes.

digging instruments to the Forest Guard, thus, the Block Officer reported the matter to the police vide his complain Ext.PW1/A, accompanied by the damage report.

The police visited the spot and took into possession the logs of trees and gave it on supurdari to the Forest Guard. The demarcation of the land was taken from the Tehsildar Shri G.C. Negi and he submitted his report Ext.PW4/A. After completing the investigation, the case was presented in the court under the aforesaid sections.

The respondents were charge-sheeted for the offences to which they pleaded not guilty and claimed trial. In order to prove their case, the prosecution examined their witnesses and the respondents were also examined under Section 313 of the Code of Criminal Procedure. The circumstances put to them were denied by them.

Upon consideration of the evidence and after hearing the counsel for the parties, the learned trial court had acquitted the respondents. The findings of the acquittal have been assailed in this appeal on law and facts.

I have reappraised the evidence on record. In order to constitute the offence under Section 33 of the Indian Forest Act, it is incumbent upon the prosecution to prove the notification under Section 29 of the Indian Forest Act, to the effect that the land in question fell within the protected forest and to constitute the offence under Section 379 of the Indian Penal Code, the possession of the Government must be proved, failing which the conviction of the respondents cannot be sustained. Shri D.S. Nainta, learned Deputy Advocate General has fairly and squarely admitted that the prosecution has not produced the notification under Section 29 of the Indian Forest Act in order to show that the alleged land fell

within the protected forest. The onus to prove the case is entirely on the prosecution. The demarcation report Ext.PW4/A, lacks the requisite elements and it is also not clear from the record that the land in question was demarcated in the presence of the respondents. Therefore, in absence of the aforesaid basic requirement, the prosecution case was bound to fail. The alleged confession recorded on the damage report cannot be taken as correct on its face value in the given circumstances. The findings based for acquittal are born out from the evidence on record. Thus, it cannot be said to be perverse. Therefore, it requires no interference. Accordingly, the appeal is dismissed.

The respondents are discharged for their bail bonds entered upon by them at any time during the proceedings of this case.

September 26, 2007. **(Surinder Singh)**
(PDS) **Judge**.